IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 5201 of 2001 (S/S)
Old no. 15786/99

Sudhir Kumar Bhatnagar ……. Petitioner

Versus

Union of India & others ……. Respondents

Date of decision: 18, September 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should b sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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WRIT PETITION NO. 5201 (S/S) OF 2001.

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Versus

Union of India and others .....Respondents.

Mr. B.P. Nautiyal, learned counsel for the petitioner.
Sri V.B.S. Negi, Sr.S.C. (Central Govt.)

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioenr has sought quashing of the Seniority list (Annexure -17) to the writ petition. Also, mandamus has been sought for correction in the Seniority list giving the petitioner his due place and directing the promotion to the petitioner due to him.

2. Brief facts of the case as narrated in the writ petition are that Indian Council of Forestry Research and Education (respondent no.2) is a Central Government Department and Forest Research Institute (for brevity FRI) is one of the institutes of the said department. The F.R.I. is an autonomous organization created vide Central Govt. Order 1/8/89-RT dated 30.5.1991 of the Ministry of Environment and Forest. The petitioenr was initially appointed as Technical Assistant, Grade-I vide order-dated 30.8.1977 passed by respondent no.4 and in pursuance thereof the

petitioner joined his duties on 31.8.1977 in F.R.I., Dehradun. It is further alleged that the petitioner's appointment was against substantive vacancy of Technical Assistant, Grade-I. The petitioner, on completion of probation was allowed quash permanent appointment status vide order dated 7/8-4-1982 passed by the respondent no.4 w.e.f. 31.8.1980. The Registrar of the F.R.I. (respondent no.4) vide an order dated 20.3.1992 communicated that the petitioner is readjusted against the post of Assistant Machine Operator in the revised pay scale of R.s 950-1500/-. There was no question of readjustment as the petitioenr was already working as Technical Assistant, Grade-I. The petitioners' services were confirmed after the recommendation of the D.P.C. w.e.f. 2.4.1992. Further the formal confirmation order was issued on 7.1.1996 (Annexure-6) by the respondent no.4. A department known as Logging development Institute (for brevity L.D.I.) was merged in the F.R.I. vide central Govt. Orders dated 4.5.1987 and 1.6.1987 (Annexure- 7 and 8) and its staff was also absorbed with the F.R.I., Dehradun. In 1989 a seniority list of the employees was prepared (Annecure-9 and 10). Later employees of L.D.I. were given place with the employees of the F.R.I. in the provisional seniority list dated 24.3.1994. In which the employees junior to the petitioenr were given place above the petitioner. As such the petitioner

has alleged the said list was arbitrary and discriminatory against him. Consequence to said seniority list the persons junior to the petitioner, namely, Shri H.S, Chuhan, Shri Deepak Kumar, Shri R.P. Singh and Shri C.M. Sharma (respondent no. 5 to 8) were promoted to the post of Logging Inspectors. Aggrieved by which the petitioner made representation on 17.11.1997 and 23.4.1998 (Annexure-14 and 15) to the concerned authorities. Thereafter a provisional seniority list (Annexure-16) was prepared on 3.9.1998 wherein the petitioenr was shown at serial no. 1 but respondent no.1 arbitrarily and illegally again changed the seniority list whereby the petitioner was down listed in seniority list (Annexure-17) from the serial no. 1 to serial no. 7. Aggrieved by which the petitioner has challenged the seniority list through this writ petition.

3. On behalf of the respondents no.1, 2, 3 and 4 counter affidavit has been filed by one Shri Dhirendra Kumar, Assistant Administrative Officer who has admitted that the petitioner was appointed initially as Technical Assistant Grade-I in the pay scale of Rs. 260-400/- but it is alleged that the said appointment was temporary under the Fifth Five year Plan Scheme. After the said scheme were over the petitioenr was accommodated in Forest Fire Protection Scheme and later adjusted against the vacancy of Assistant Machine Operator in the revised pay scale of Rs. 950-1500/-

w.e.f 2.4.1992. In the counter affidavit it is stated that in 1989 petitioner's seniority was wrongly mentioned in the seniority list. The anomaly was detected on 21.4.1992. It is further stated in the counter affidavit that in his letter dated 5th March, 1985 (Copy Annexure CA-5) petitioner himself has admitted that he was a employee under a scheme. The persons shown senior to the petitioner, absorbed form the earlier L.D.I., were regular employees and there is no illegally or discrimination in the impugned seniority list. The reason given in the counter affidavit for bringing down the name of the petitioner from serial no.1 to serial no. 7 in the seniority list is that the petitioner was a temporary employee appointed under a scheme.

4. Separate Counter affidavit has been field on behalf of the respondent no. 8 in which it is stated that the petitioner has misled the court by concealing the fact that he was appointed under a scheme on temporary basis and was not a regular employee like the answering respondent. It is further stated in this counter affidavit that the scheme in which the petitioner was appointed was abolished and that he was reappointed on 27.8.1981. It is further submitted in this counter affidavit that the petitioner is not entitled to the seniority from the period prior to 1992.

5. I heard learned counsel for the parties and perused the affidavit, counter affidavits and rejoinder affidavit and annexure annexed thereto.

6. The short question for consideration before this court whether the petitioner's name is wrongly relegated in the impugned seniority list from serial no. 1 to serial no. 7 as alleged in the writ petition.

7. It is settled principle of law of the service jurisprudence that a person who is appointed under some rules and is not ad hoc employee is entitled to the seniority form the date of his initial appointment and not form the date of confirmation. Admittedly the petitioenr was initially appointed as Technical Assistant Grade-I I the year 1977 (Annexure 2 to the writ petition). It is not disputed that initial appointment of the respondents no. 5 to 10 is much later to that of the petitioner. Learned counsel for the respondents argued that the petitioner's appointment was temporary and was under a scheme was such he cannot be said to be a regular appointee. It is further submitted on behalf of the respondents that the petitioner has misled the court by concealing the fact that he was appointed under a scheme. In the opinion of this court is does not made a difference if a person is appointed under same scheme provided his appointment is regular nature. From the perusal of the appointment letter dated 30.8.1977

(Annexure-2) by which the petitioner is appointed as Technical Assistant Grade-I in the pay scale of 260-6-290-EB-6-326-8-366-EB-8-390-10-400/- per month, and the terms and conditions clearly mention that he is temporary employee. In clause 4 of the terms and conditions it is provided that the appointment would be on probation for a period of two years in case he is retained or is likely to be retained in service for more that two years. Copy of Annexure 3 to the writ petition which is also not denied by the respondent, is declaration and order of appointment under rules 3 and 4 of the Central Civil Services (Temporary Service) Rules 1965 by which the petitioenr was declared quasi permanent as Technical Assistant w.e.f. 31.8.1980. This document was signed by the Registrar of the Forest Research Institute (respondent no.4).

8. It is also not disputed that the late on petitioner was finally confirmed in the year 1992. The counsel for the respondents failed to show me if there was even single days break in the service of the petitioenr. As such merely for the reason that the respondents were regular appointee not appointed under a scheme does not make them senior to the petitioner. Unless their initial appointment is earlier than that of the petitioner. AS such this court is of the view that the petitioner, Sri S.K. Bhatnagar, was discriminated wrongly by placing him below the respondents no. 5 to 10 in

the impugned seniority list dated 7.4.1999 (Annexure-17). In the provisional seniority list dated 3.9.1998 (Annexure-16) and the final seniority list dated 7.4.1999 (Annexure-17) his initial appointment is still shown to be date of selection i.e. 30.8.1977. Further in the column of date of appointment in the provisional list it is shown 31.8.1977 while in the final list it is shown to be 4.5.19897. There is no explanation with the respondents to fix the said date of 1987 as the date of initial appointment for the purposes of seniority.

9. For the reasons as discussed above, the writ petition deserves to be allowed. The writ petition is accordingly allowed. The respondents are directed to restore the seniority of the petitioenr above the respondent no. 5 to 10 and to give him consequential benefits, he is entitled to. No order as to costs.

Dated : 18.09.2004 **(Prafulla C. Pant, J.)**

P. Bandhavakar